

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1761

**Introduced by Assembly Member Weber
(Principal coauthor: Assembly Member Santiago)**

February 2, 2016

An act to add Section 1107.5 to the Evidence Code, and to amend Sections 236.1 and 11105 of, and to add Section 236.23 to, the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 1761, as amended, Weber. Human trafficking: victims: affirmative defense.

(1) Under existing law, as amended by Proposition 35, an initiative measure approved by the voters at the November 6, 2012, statewide general election, a person who deprives or violates another person's personal liberty with the intent to obtain forced labor or services or who deprives or violates another person's personal liberty for the purpose of prostitution or sexual exploitation is guilty of human trafficking, a felony. Proposition 35 provides that it may be amended by a statute in furtherance of its objectives by a majority of the membership of each house of the Legislature concurring.

This bill would create an affirmative defense against a charge of a nonviolent crime that was committed as a direct result of being a human trafficking victim. ~~The bill would create an affirmative defense to any crime not punishable by death that the defendant committed as a result of duress created by a person who deprived or violated the personal liberty of the defendant.~~ The bill would require the court to dismiss any charges arising from a commercial sex act against a person who was

under 18 years of age, whether or not the defendant asserts the affirmative defense. The bill would grant a defendant who prevails on that affirmative defense the right to have all records in the case sealed and to be released from all penalties and disabilities, as provided. The bill would define “human trafficking victim” and “nonviolent crime” for these purposes.

(2) Existing law makes expert testimony regarding intimate partner battering and its effects admissible in a criminal action.

This bill would make expert testimony regarding the effect of human trafficking on a human trafficking victim admissible in a criminal action.

(3) Existing law requires the Attorney General to compile and disseminate state summary criminal history information pertaining to the identification and criminal history of any person.

This bill would require the Attorney General to exclude from the state summary criminal history information to exclude any charge or conviction for which relief has been granted pursuant to the provisions of this bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1107.5 is added to the Evidence Code,
- 2 to read:
- 3 1107.5. (a) In a criminal action, expert testimony is admissible
- 4 by either the prosecution or the defense regarding the effects of
- 5 human trafficking on human trafficking victims, including the
- 6 nature and effect of physical, emotional, or mental abuse on the
- 7 beliefs, perceptions, or behavior of human trafficking victims.
- 8 (b) The foundation shall be sufficient for admission of this expert
- 9 testimony if the proponent of the evidence establishes its relevancy
- 10 and the proper qualifications of the expert witness. Expert opinion
- 11 testimony on the effects of human trafficking on victims shall not
- 12 be considered a new scientific technique whose reliability is
- 13 unproven.
- 14 (c) For purposes of this section, “human trafficking victim” is
- 15 defined in Section 236.1 of the Penal Code.
- 16 (d) This section is intended as a rule of evidence only and no
- 17 substantive change affecting the Penal Code is intended.
- 18 SEC. 2. Section 236.1 of the Penal Code is amended to read:

1 236.1. (a) A person who deprives or violates the personal
2 liberty of another with the intent to obtain forced labor or services,
3 is guilty of human trafficking and shall be punished by
4 imprisonment in the state prison for 5, 8, or 12 years and a fine of
5 not more than five hundred thousand dollars (\$500,000).

6 (b) A person who deprives or violates the personal liberty of
7 another with the intent to effect or maintain a violation of Section
8 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5,
9 311.6, or 518 is guilty of human trafficking and shall be punished
10 by imprisonment in the state prison for 8, 14, or 20 years and a
11 fine of not more than five hundred thousand dollars (\$500,000).

12 (c) A person who causes, induces, or persuades, or attempts to
13 cause, induce, or persuade, a person who is a minor at the time of
14 commission of the offense to engage in a commercial sex act, with
15 the intent to effect or maintain a violation of Section 266, 266h,
16 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518
17 is guilty of human trafficking. A violation of this subdivision is
18 punishable by imprisonment in the state prison as follows:

19 (1) Five, 8, or 12 years and a fine of not more than five hundred
20 thousand dollars (\$500,000).

21 (2) Fifteen years to life and a fine of not more than five hundred
22 thousand dollars (\$500,000) when the offense involves force, fear,
23 fraud, deceit, coercion, violence, duress, menace, or threat of
24 unlawful injury to the victim or to another person.

25 (d) In determining whether a minor was caused, induced, or
26 persuaded to engage in a commercial sex act, the totality of the
27 circumstances, including the age of the victim, his or her
28 relationship to the trafficker or agents of the trafficker, and any
29 handicap or disability of the victim, shall be considered.

30 (e) Consent by a victim of human trafficking who is a minor at
31 the time of the commission of the offense is not a defense to a
32 criminal prosecution under this section.

33 (f) Mistake of fact as to the age of a victim of human trafficking
34 who is a minor at the time of the commission of the offense is not
35 a defense to a criminal prosecution under this section.

36 (g) The Legislature finds that the definition of human trafficking
37 in this section is equivalent to the federal definition of a severe
38 form of trafficking found in Section 7102(9) of Title 22 of the
39 United States Code.

40 (h) For purposes of this chapter, the following definitions apply:

1 (1) “Coercion” includes a scheme, plan, or pattern intended to
2 cause a person to believe that failure to perform an act would result
3 in serious harm to or physical restraint against any person; the
4 abuse or threatened abuse of the legal process; debt bondage; or
5 providing and facilitating the possession of a controlled substance
6 to a person with the intent to impair the person’s judgment.

7 (2) “Commercial sex act” means sexual conduct on account of
8 which anything of value is given or received by any person.

9 (3) “Deprivation or violation of the personal liberty of another”
10 includes substantial and sustained restriction of another’s liberty
11 accomplished through force, fear, fraud, deceit, coercion, violence,
12 duress, menace, or threat of unlawful injury to the victim or to
13 another person, under circumstances where the person receiving
14 or apprehending the threat reasonably believes that it is likely that
15 the person making the threat would carry it out.

16 (4) “Duress” includes a direct or implied threat of force,
17 violence, danger, hardship, or retribution sufficient to cause a
18 reasonable person to acquiesce in or perform an act which he or
19 she would otherwise not have submitted to or performed; a direct
20 or implied threat to destroy, conceal, remove, confiscate, or possess
21 any actual or purported passport or immigration document of the
22 victim; or knowingly destroying, concealing, removing,
23 confiscating, or possessing any actual or purported passport or
24 immigration document of the victim.

25 (5) “Forced labor or services” means labor or services that are
26 performed or provided by a person and are obtained or maintained
27 through force, fraud, duress, or coercion, or equivalent conduct
28 that would reasonably overbear the will of the person.

29 (6) “Great bodily injury” means a significant or substantial
30 physical injury.

31 (7) “Human trafficking victim” means a person who is a victim
32 of the acts described in subdivisions (a), (b), or (c).

33 (8) “Minor” means a person less than 18 years of age.

34 (9) “Serious harm” includes any harm, whether physical or
35 nonphysical, including psychological, financial, or reputational
36 harm, that is sufficiently serious, under all the surrounding
37 circumstances, to compel a reasonable person of the same
38 background and in the same circumstances to perform or to
39 continue performing labor, services, or commercial sexual acts in
40 order to avoid incurring that harm.

1 (10) “Nonviolent crime” means any crime or offense other than
2 murder, attempted murder, voluntary manslaughter, mayhem,
3 kidnapping, rape, robbery, arson, carjacking, or any other violent
4 felony as defined in subdivision (c) of Section 667.5.

5 (i) The total circumstances, including the age of the victim, the
6 relationship between the victim and the trafficker or agents of the
7 trafficker, and any handicap or disability of the victim, shall be
8 factors to consider in determining the presence of “deprivation or
9 violation of the personal liberty of another,” “duress,” and
10 “coercion” as described in this section.

11 SEC. 3. Section 236.23 is added to the Penal Code, to read:

12 236.23. (a) ~~(1)~~—It is a defense to a charge of a nonviolent crime
13 that the defendant or minor committed the offense as a direct result
14 of being a human trafficking victim.

15 ~~(2) It is a defense to a charge of any crime not punishable by~~
16 ~~death that the defendant committed the offense as a direct result~~
17 ~~of duress created by a person who has deprived or violated the~~
18 ~~personal liberty of the defendant within the meaning of subdivision~~
19 ~~(a) or (b) of Section 236.1.~~

20 (b) A defendant asserting the affirmative defense specified in
21 subdivision (a) has the burden of establishing the affirmative
22 defense by a preponderance of the evidence.

23 (c) A person charged with a crime constituting or arising from
24 a commercial sex act, including violation of subdivision (b) of
25 Section 647 or Section 653.22, who was under 18 years of age at
26 the time of the offense shall be conclusively presumed to have
27 committed the offense as a direct result of being a victim of human
28 trafficking.

29 (d) The court shall independently determine whether the
30 conditions set forth in subdivision (c) are met and, if so, find that
31 the affirmative defense applies to the charge and to dismiss it,
32 whether or not the defendant asserts the affirmative defense.

33 (e) Certified records of a federal, state, tribal, or local court or
34 governmental agency documenting the person’s status as a victim
35 of human trafficking at the time of the offense, including
36 identification of a victim of human trafficking by a peace officer
37 pursuant to Section 236.2 and certified records of approval notices
38 or enforcement certifications generated from federal immigration
39 proceedings, create a rebuttable presumption that an offense was

1 committed by the defendant as a direct result of being a human
2 trafficking victim.

3 (f) The affirmative defense may be asserted at any time before
4 the entry of a plea of guilty or nolo contendere or admission to the
5 truth of the charges and ~~prior to~~ *before the* conclusion of any trial
6 for the offense. If asserted before the preliminary hearing held in
7 a case, the affirmative defense shall, upon request by the defendant,
8 be determined at the preliminary hearing.

9 (g) If the defendant prevails on the affirmative defense provided
10 under subdivision (a) or if the court dismisses charges under
11 subdivision (c), the defendant is entitled to all of the following
12 relief:

13 (1) The court shall order that all records in the case be sealed
14 pursuant to Section 851.86 and shall grant the relief provided in
15 subdivision (b) of Section 851.8.

16 (2) The victim shall be released from all penalties and disabilities
17 resulting from the charge, and all actions and proceedings by law
18 enforcement personnel, courts, or other government employees
19 that led to the charge shall be deemed not to have occurred.

20 (3) (A) The human trafficking victim may in all circumstances
21 state that he or she has never been arrested for, or charged with,
22 the crime that is the subject of the charge or conviction, including
23 without limitation in response to questions on employment,
24 housing, financial aid, or loan applications.

25 (B) The human trafficking victim may not be denied rights or
26 benefits, ~~including~~ *including*, without ~~limitation~~ *limitation*,
27 employment, housing, financial aid, welfare, or a loan or other
28 financial accommodation, based on the arrest or charge or the
29 human trafficking victim's failure or refusal to disclose the
30 existence of or information concerning those events.

31 (C) The human trafficking victim may not be thereafter charged
32 or convicted of perjury or otherwise of giving a false statement by
33 reason of having failed to disclose or acknowledge the existence
34 of the charge, or any arrest, indictment, trial, or other proceedings
35 related thereto.

36 (h) If, in any proceeding pursuant to Section 602 of the Welfare
37 and Institutions Code, the juvenile court finds that the offense on
38 which the proceeding is based was committed as a direct result of
39 the minor being a human trafficking victim, the court shall dismiss

1 the proceeding and order the relief prescribed in Section 786 of
2 the Welfare and Institutions Code.

3 SEC. 4. Section 11105 of the Penal Code is amended to read:

4 11105. (a) (1) The Department of Justice shall maintain state
5 summary criminal history information.

6 (2) As used in this section:

7 (A) "State summary criminal history information" means the
8 master record of information compiled by the Attorney General
9 pertaining to the identification and criminal history of any person,
10 such as name, date of birth, physical description, fingerprints,
11 photographs, dates of arrests, arresting agencies and booking
12 numbers, charges, dispositions, and similar data about the person.

13 (B) "State summary criminal history information" does not refer
14 to records and data compiled by criminal justice agencies other
15 than the Attorney General, nor does it refer to records of complaints
16 to or investigations conducted by, or records of intelligence
17 information or security procedures of, the office of the Attorney
18 General and the Department of Justice.

19 (b) The Attorney General shall furnish state summary criminal
20 history information to any of the following, if needed in the course
21 of their duties, provided that when information is furnished to
22 assist an agency, officer, or official of state or local government,
23 a public utility, or any other entity, in fulfilling employment,
24 certification, or licensing duties, Chapter 1321 of the Statutes of
25 1974 and Section 432.7 of the Labor Code shall apply:

26 (1) The courts of the state.

27 (2) Peace officers of the state, as defined in Section 830.1,
28 subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section
29 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and
30 (b) of Section 830.5.

31 (3) District attorneys of the state.

32 (4) Prosecuting city attorneys of any city within the state.

33 (5) City attorneys pursuing civil gang injunctions pursuant to
34 Section 186.22a, or drug abatement actions pursuant to Section
35 3479 or 3480 of the Civil Code, or Section 11571 of the Health
36 and Safety Code.

37 (6) Probation officers of the state.

38 (7) Parole officers of the state.

1 (8) A public defender or attorney of record when representing
2 a person in proceedings upon a petition for a certificate of
3 rehabilitation and pardon pursuant to Section 4852.08.

4 (9) A public defender or attorney of record when representing
5 a person in a criminal case, or a parole, mandatory supervision
6 pursuant to paragraph (5) of subdivision (h) of Section 1170, or
7 postrelease community supervision revocation or revocation
8 extension proceeding, ~~and~~ *and*, if ~~authorized~~ *authorized*, access
9 by statutory or decisional law.

10 (10) Any agency, officer, or official of the state if the criminal
11 history information is required to implement a statute or regulation
12 that expressly refers to specific criminal conduct applicable to the
13 subject person of the state summary criminal history information,
14 and contains requirements or exclusions, or both, expressly based
15 upon that specified criminal conduct. The agency, officer, or
16 official of the state authorized by this paragraph to receive state
17 summary criminal history information may also transmit fingerprint
18 images and related information to the Department of Justice to be
19 transmitted to the Federal Bureau of Investigation.

20 (11) Any city or county, city and county, district, or any officer
21 or official thereof if access is needed in order to assist that agency,
22 officer, or official in fulfilling employment, certification, or
23 licensing duties, and if the access is specifically authorized by the
24 city council, board of supervisors, or governing board of the city,
25 county, or district if the criminal history information is required
26 to implement a statute, ordinance, or regulation that expressly
27 refers to specific criminal conduct applicable to the subject person
28 of the state summary criminal history information, and contains
29 requirements or exclusions, or both, expressly based upon that
30 specified criminal conduct. The city or county, city and county,
31 district, or the officer or official thereof authorized by this
32 paragraph may also transmit fingerprint images and related
33 information to the Department of Justice to be transmitted to the
34 Federal Bureau of Investigation.

35 (12) The subject of the state summary criminal history
36 information under procedures established under Article 5
37 (commencing with Section 11120).

38 (13) Any person or entity when access is expressly authorized
39 by statute if the criminal history information is required to
40 implement a statute or regulation that expressly refers to specific

1 criminal conduct applicable to the subject person of the state
2 summary criminal history information, and contains requirements
3 or exclusions, or both, expressly based upon that specified criminal
4 conduct.

5 (14) Health officers of a city, county, city and county, or district
6 when in the performance of their official duties enforcing Section
7 120175 of the Health and Safety Code.

8 (15) Any managing or supervising correctional officer of a
9 county jail or other county correctional facility.

10 (16) Any humane society, or society for the prevention of cruelty
11 to animals, for the specific purpose of complying with Section
12 14502 of the Corporations Code for the appointment of humane
13 officers.

14 (17) Local child support agencies established by Section 17304
15 of the Family Code. When a local child support agency closes a
16 support enforcement case containing summary criminal history
17 information, the agency shall delete or purge from the file and
18 destroy any documents or information concerning or arising from
19 offenses for or of which the parent has been arrested, charged, or
20 convicted, other than for offenses related to the parent's having
21 failed to provide support for minor children, consistent with the
22 requirements of Section 17531 of the Family Code.

23 (18) County child welfare agency personnel who have been
24 delegated the authority of county probation officers to access state
25 summary criminal history information pursuant to Section 272 of
26 the Welfare and Institutions Code for the purposes specified in
27 Section 16504.5 of the Welfare and Institutions Code. Information
28 from criminal history records provided pursuant to this subdivision
29 shall not be used for any purposes other than those specified in
30 this section and Section 16504.5 of the Welfare and Institutions
31 Code. When an agency obtains records obtained both on the basis
32 of name checks and fingerprint checks, final placement decisions
33 shall be based only on the records obtained pursuant to the
34 fingerprint check.

35 (19) The court of a tribe, or court of a consortium of tribes, that
36 has entered into an agreement with the state pursuant to Section
37 10553.1 of the Welfare and Institutions Code. This information
38 may be used only for the purposes specified in Section 16504.5
39 of the Welfare and Institutions Code and for tribal approval or
40 tribal licensing of foster care or adoptive homes. Article 6

1 (commencing with Section 11140) shall apply to officers, members,
2 and employees of a tribal court receiving criminal record offender
3 information pursuant to this section.

4 (20) Child welfare agency personnel of a tribe or consortium
5 of tribes that has entered into an agreement with the state pursuant
6 to Section 10553.1 of the Welfare and Institutions Code and to
7 whom the state has delegated duties under paragraph (2) of
8 subdivision (a) of Section 272 of the Welfare and Institutions Code.
9 The purposes for use of the information shall be for the purposes
10 specified in Section 16504.5 of the Welfare and Institutions Code
11 and for tribal approval or tribal licensing of foster care or adoptive
12 homes. When an agency obtains records on the basis of name
13 checks and fingerprint checks, final placement decisions shall be
14 based only on the records obtained pursuant to the fingerprint
15 check. Article 6 (commencing with Section 11140) shall apply to
16 child welfare agency personnel receiving criminal record offender
17 information pursuant to this section.

18 (21) An officer providing conservatorship investigations
19 pursuant to Sections 5351, 5354, and 5356 of the Welfare and
20 Institutions Code.

21 (22) A court investigator providing investigations or reviews
22 in conservatorships pursuant to Section 1826, 1850, 1851, or
23 2250.6 of the Probate Code.

24 (23) A person authorized to conduct a guardianship investigation
25 pursuant to Section 1513 of the Probate Code.

26 (24) A humane officer pursuant to Section 14502 of the
27 Corporations Code for the purposes of performing his or her duties.

28 (25) A public agency described in subdivision (b) of Section
29 15975 of the Government Code, for the purpose of oversight and
30 enforcement policies with respect to its contracted providers.

31 (c) The Attorney General may furnish state summary criminal
32 history information and, when specifically authorized by this
33 subdivision, federal level criminal history information upon a
34 showing of a compelling need to any of the following, provided
35 that when information is furnished to assist an agency, officer, or
36 official of state or local government, a public utility, or any other
37 entity in fulfilling employment, certification, or licensing duties,
38 Chapter 1321 of the Statutes of 1974 and Section 432.7 of the
39 Labor Code shall apply:

1 (1) Any public utility, as defined in Section 216 of the Public
2 Utilities Code, that operates a nuclear energy facility when access
3 is needed in order to assist in employing persons to work at the
4 facility, provided that, if the Attorney General supplies the data,
5 he or she shall furnish a copy of the data to the person to whom
6 the data relates.

7 (2) To a peace officer of the state other than those included in
8 subdivision (b).

9 (3) To an illegal dumping enforcement officer as defined in
10 subdivision (j) of Section 830.7.

11 (4) To a peace officer of another country.

12 (5) To public officers, other than peace officers, of the United
13 States, other states, or possessions or territories of the United
14 States, provided that access to records similar to state summary
15 criminal history information is expressly authorized by a statute
16 of the United States, other states, or possessions or territories of
17 the United States if the information is needed for the performance
18 of their official duties.

19 (6) To any person when disclosure is requested by a probation,
20 parole, or peace officer with the consent of the subject of the state
21 summary criminal history information and for purposes of
22 furthering the rehabilitation of the subject.

23 (7) The courts of the United States, other states, or territories
24 or possessions of the United States.

25 (8) Peace officers of the United States, other states, or territories
26 or possessions of the United States.

27 (9) To any individual who is the subject of the record requested
28 if needed in conjunction with an application to enter the United
29 States or any foreign nation.

30 (10) (A) (i) Any public utility, as defined in Section 216 of the
31 Public Utilities Code, or any cable corporation as defined in
32 subparagraph (B), if receipt of criminal history information is
33 needed in order to assist in employing current or prospective
34 employees, contract employees, or subcontract employees who,
35 in the course of their employment, may be seeking entrance to
36 private residences or adjacent grounds. The information provided
37 shall be limited to the record of convictions and any arrest for
38 which the person is released on bail or on his or her own
39 recognizance pending trial.

1 (ii) If the Attorney General supplies the data pursuant to this
2 paragraph, the Attorney General shall furnish a copy of the data
3 to the current or prospective employee to whom the data relates.

4 (iii) Any information obtained from the state summary criminal
5 history is confidential and the receiving public utility or cable
6 corporation shall not disclose its contents, other than for the
7 purpose for which it was acquired. The state summary criminal
8 history information in the possession of the public utility or cable
9 corporation and all copies made from it shall be destroyed not
10 more than 30 days after employment or promotion or transfer is
11 denied or granted, except for those cases where a current or
12 prospective employee is out on bail or on his or her own
13 recognizance pending trial, in which case the state summary
14 criminal history information and all copies shall be destroyed not
15 more than 30 days after the case is resolved.

16 (iv) A violation of this paragraph is a misdemeanor, and shall
17 give the current or prospective employee who is injured by the
18 violation a cause of action against the public utility or cable
19 corporation to recover damages proximately caused by the
20 violations. Any public utility's or cable corporation's request for
21 state summary criminal history information for purposes of
22 employing current or prospective employees who may be seeking
23 entrance to private residences or adjacent grounds in the course
24 of their employment shall be deemed a "compelling need" as
25 required to be shown in this subdivision.

26 (v) This section shall not be construed as imposing any duty
27 upon public utilities or cable corporations to request state summary
28 criminal history information on any current or prospective
29 employees.

30 (B) For purposes of this paragraph, "cable corporation" means
31 any corporation or firm that transmits or provides television,
32 computer, or telephone services by cable, digital, fiber optic,
33 satellite, or comparable technology to subscribers for a fee.

34 (C) Requests for federal level criminal history information
35 received by the Department of Justice from entities authorized
36 pursuant to subparagraph (A) shall be forwarded to the Federal
37 Bureau of Investigation by the Department of Justice. Federal level
38 criminal history information received or compiled by the
39 Department of Justice may then be disseminated to the entities
40 referenced in subparagraph (A), as authorized by law.

1 (D) (i) Authority for a cable corporation to request state or
2 federal level criminal history information under this paragraph
3 shall commence July 1, 2005.

4 (ii) Authority for a public utility to request federal level criminal
5 history information under this paragraph shall commence July 1,
6 2005.

7 (11) To any campus of the California State University or the
8 University of California, or any four year college or university
9 accredited by a regional accreditation organization approved by
10 the United States Department of Education, if needed in
11 conjunction with an application for admission by a convicted felon
12 to any special education program for convicted felons, including,
13 but not limited to, university alternatives and halfway houses. Only
14 conviction information shall be furnished. The college or university
15 may require the convicted felon to be fingerprinted, and any inquiry
16 to the department under this section shall include the convicted
17 felon's fingerprints and any other information specified by the
18 department.

19 (12) To any foreign government, if requested by the individual
20 who is the subject of the record requested, if needed in conjunction
21 with the individual's application to adopt a minor child who is a
22 citizen of that foreign nation. Requests for information pursuant
23 to this paragraph shall be in accordance with the process described
24 in Sections 11122 to 11124, inclusive. The response shall be
25 provided to the foreign government or its designee and to the
26 individual who requested the information.

27 (d) Whenever an authorized request for state summary criminal
28 history information pertains to a person whose fingerprints are on
29 file with the Department of Justice and the department has no
30 criminal history of that person, and the information is to be used
31 for employment, licensing, or certification purposes, the fingerprint
32 card accompanying the request for information, if any, may be
33 stamped "no criminal record" and returned to the person or entity
34 making the request.

35 (e) Whenever state summary criminal history information is
36 furnished as the result of an application and is to be used for
37 employment, licensing, or certification purposes, the Department
38 of Justice may charge the person or entity making the request a
39 fee that it determines to be sufficient to reimburse the department
40 for the cost of furnishing the information. In addition, the

1 Department of Justice may add a surcharge to the fee to fund
2 maintenance and improvements to the systems from which the
3 information is obtained. Notwithstanding any other law, any person
4 or entity required to pay a fee to the department for information
5 received under this section may charge the applicant a fee sufficient
6 to reimburse the person or entity for this expense. All moneys
7 received by the department pursuant to this section, Sections
8 11105.3 and 26190, and former Section 13588 of the Education
9 Code shall be deposited in a special account in the General Fund
10 to be available for expenditure by the department to offset costs
11 incurred pursuant to those sections and for maintenance and
12 improvements to the systems from which the information is
13 obtained upon appropriation by the Legislature.

14 (f) Whenever there is a conflict, the processing of criminal
15 fingerprints and fingerprints of applicants for security guard or
16 alarm agent registrations or firearms qualification permits
17 submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4
18 of the Business and Professions Code shall take priority over the
19 processing of other applicant fingerprints.

20 (g) It is not a violation of this section to disseminate statistical
21 or research information obtained from a record, provided that the
22 identity of the subject of the record is not disclosed.

23 (h) It is not a violation of this section to include information
24 obtained from a record in (1) a transcript or record of a judicial or
25 administrative proceeding or (2) any other public record if the
26 inclusion of the information in the public record is authorized by
27 a court, statute, or decisional law.

28 (i) Notwithstanding any other law, the Department of Justice
29 or any state or local law enforcement agency may require the
30 submission of fingerprints for the purpose of conducting summary
31 criminal history information checks that are authorized by law.

32 (j) The state summary criminal history information shall include
33 any finding of mental incompetence pursuant to Chapter 6
34 (commencing with Section 1367) of Title 10 of Part 2 arising out
35 of a complaint charging a felony offense specified in Section 290.

36 (k) (1) This subdivision shall apply whenever state or federal
37 summary criminal history information is furnished by the
38 Department of Justice as the result of an application by an
39 authorized agency or organization and the information is to be
40 used for peace officer employment or certification purposes. As

1 used in this subdivision, a peace officer is defined in Chapter 4.5
2 (commencing with Section 830) of Title 3 of Part 2.

3 (2) Notwithstanding any other law, whenever state summary
4 criminal history information is initially furnished pursuant to
5 paragraph (1), the Department of Justice shall disseminate the
6 following information:

7 (A) Every conviction rendered against the applicant.

8 (B) Every arrest for an offense for which the applicant is
9 presently awaiting trial, whether the applicant is incarcerated or
10 has been released on bail or on his or her own recognizance
11 pending trial.

12 (C) Every arrest or detention, except for an arrest or detention
13 resulting in an exoneration, provided, however, that where the
14 records of the Department of Justice do not contain a disposition
15 for the arrest, the Department of Justice first makes a genuine effort
16 to determine the disposition of the arrest.

17 (D) Every successful diversion.

18 (E) Every date and agency name associated with all retained
19 peace officer or nonsworn law enforcement agency employee
20 preemployment criminal offender record information search
21 requests.

22 (F) Sex offender registration status of the applicant.

23 (I) (1) This subdivision shall apply whenever state or federal
24 summary criminal history information is furnished by the
25 Department of Justice as the result of an application by a criminal
26 justice agency or organization as defined in Section 13101, and
27 the information is to be used for criminal justice employment,
28 licensing, or certification purposes.

29 (2) Notwithstanding any other law, whenever state summary
30 criminal history information is initially furnished pursuant to
31 paragraph (1), the Department of Justice shall disseminate the
32 following information:

33 (A) Every conviction rendered against the applicant.

34 (B) Every arrest for an offense for which the applicant is
35 presently awaiting trial, whether the applicant is incarcerated or
36 has been released on bail or on his or her own recognizance
37 pending trial.

38 (C) Every arrest for an offense for which the records of the
39 Department of Justice do not contain a disposition or did not result
40 in a conviction, provided that the Department of Justice first makes

1 a genuine effort to determine the disposition of the arrest. However,
2 information concerning an arrest shall not be disclosed if the
3 records of the Department of Justice indicate or if the genuine
4 effort reveals that the subject was exonerated, successfully
5 completed a diversion or deferred entry of judgment program, or
6 the arrest was deemed a detention.

7 (D) Every date and agency name associated with all retained
8 peace officer or nonsworn law enforcement agency employee
9 preemployment criminal offender record information search
10 requests.

11 (E) Sex offender registration status of the applicant.

12 (m) (1) This subdivision shall apply whenever state or federal
13 summary criminal history information is furnished by the
14 Department of Justice as the result of an application by an
15 authorized agency or organization pursuant to Section 1522,
16 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
17 any statute that incorporates the criteria of any of those sections
18 or this subdivision by reference, and the information is to be used
19 for employment, licensing, or certification purposes.

20 (2) Notwithstanding any other provision of law, whenever state
21 summary criminal history information is initially furnished
22 pursuant to paragraph (1), the Department of Justice shall
23 disseminate the following information:

24 (A) Every conviction of an offense rendered against the
25 applicant, except a conviction for which relief has been granted
26 pursuant to Section 1203.49.

27 (B) Every arrest for an offense for which the applicant is
28 presently awaiting trial, whether the applicant is incarcerated or
29 has been released on bail or on his or her own recognizance
30 pending trial.

31 (C) Every arrest for an offense for which the Department of
32 Social Services is required by paragraph (1) of subdivision (a) of
33 Section 1522 of the Health and Safety Code to determine if an
34 applicant has been arrested. However, if the records of the
35 Department of Justice do not contain a disposition for an arrest,
36 the Department of Justice shall first make a genuine effort to
37 determine the disposition of the arrest.

38 (D) Sex offender registration status of the applicant.

39 (3) Notwithstanding the requirements of the sections referenced
40 in paragraph (1) of this subdivision, the Department of Justice

1 shall not disseminate information about an arrest subsequently
2 deemed a detention or an arrest that resulted in either the successful
3 completion of a diversion program or exoneration.

4 (n) (1) This subdivision shall apply whenever state or federal
5 summary criminal history information, to be used for employment,
6 licensing, or certification purposes, is furnished by the Department
7 of Justice as the result of an application by an authorized agency,
8 organization, or individual pursuant to any of the following:

9 (A) Paragraph (10) of subdivision (c), when the information is
10 to be used by a cable corporation.

11 (B) Section 11105.3 or 11105.4.

12 (C) Section 15660 of the Welfare and Institutions Code.

13 (D) Any statute that incorporates the criteria of any of the
14 statutory provisions listed in subparagraph (A), (B), or (C), or of
15 this subdivision, by reference.

16 (2) With the exception of applications submitted by
17 transportation companies authorized pursuant to Section 11105.3,
18 and notwithstanding any other law, whenever state summary
19 criminal history information is initially furnished pursuant to
20 paragraph (1), the Department of Justice shall disseminate the
21 following information:

22 (A) Every conviction, except a conviction for which relief has
23 been granted pursuant to Section 1203.49, rendered against the
24 applicant for a violation or attempted violation of any offense
25 specified in subdivision (a) of Section 15660 of the Welfare and
26 Institutions Code. However, with the exception of those offenses
27 for which registration is required pursuant to Section 290, the
28 Department of Justice shall not disseminate information pursuant
29 to this subdivision unless the conviction occurred within 10 years
30 of the date of the agency's request for information or the conviction
31 is over 10 years old but the subject of the request was incarcerated
32 within 10 years of the agency's request for information.

33 (B) Every arrest for a violation or attempted violation of an
34 offense specified in subdivision (a) of Section 15660 of the Welfare
35 and Institutions Code for which the applicant is presently awaiting
36 trial, whether the applicant is incarcerated or has been released on
37 bail or on his or her own recognizance pending trial.

38 (C) Sex offender registration status of the applicant.

39 (o) (1) This subdivision shall apply whenever state or federal
40 summary criminal history information is furnished by the

1 Department of Justice as the result of an application by an
2 authorized agency or organization pursuant to Section 379 or 550
3 of the Financial Code, or any statute that incorporates the criteria
4 of either of those sections or this subdivision by reference, and the
5 information is to be used for employment, licensing, or certification
6 purposes.

7 (2) Notwithstanding any other law, whenever state summary
8 criminal history information is initially furnished pursuant to
9 paragraph (1), the Department of Justice shall disseminate the
10 following information:

11 (A) Every conviction rendered against the applicant for a
12 violation or attempted violation of any offense specified in Section
13 550 of the Financial Code, except a conviction for which relief
14 has been granted pursuant to Section 1203.49.

15 (B) Every arrest for a violation or attempted violation of an
16 offense specified in Section 550 of the Financial Code for which
17 the applicant is presently awaiting trial, whether the applicant is
18 incarcerated or has been released on bail or on his or her own
19 recognizance pending trial.

20 (p) (1) This subdivision shall apply whenever state or federal
21 criminal history information is furnished by the Department of
22 Justice as the result of an application by an agency, organization,
23 or individual not defined in subdivision (k), (l), (m), (n), or (o), or
24 by a transportation company authorized pursuant to Section
25 11105.3, or any statute that incorporates the criteria of that section
26 or this subdivision by reference, and the information is to be used
27 for employment, licensing, or certification purposes.

28 (2) Notwithstanding any other law, whenever state summary
29 criminal history information is initially furnished pursuant to
30 paragraph (1), the Department of Justice shall disseminate the
31 following information:

32 (A) Every conviction rendered against the applicant, except a
33 conviction for which relief has been granted pursuant to Section
34 1203.49.

35 (B) Every arrest for an offense for which the applicant is
36 presently awaiting trial, whether the applicant is incarcerated or
37 has been released on bail or on his or her own recognizance
38 pending trial.

39 (C) Sex offender registration status of the applicant.

1 (q) All agencies, organizations, or individuals defined in
2 subdivisions (k), (l), (m), (n), (o), and (p) may contract with the
3 Department of Justice for subsequent notification pursuant to
4 Section 11105.2. This subdivision shall not supersede sections that
5 mandate an agency, organization, or individual to contract with
6 the Department of Justice for subsequent notification pursuant to
7 Section 11105.2.

8 (r) This section does not require the Department of Justice to
9 cease compliance with any other statutory notification
10 requirements.

11 (s) The provisions of Section 50.12 of Title 28 of the Code of
12 Federal Regulations are to be followed in processing federal
13 criminal history information.

14 (t) Whenever state or federal summary criminal history
15 information is furnished by the Department of Justice as the result
16 of an application by an authorized agency, organization, or
17 individual defined in subdivisions (k) to (p), inclusive, and the
18 information is to be used for employment, licensing, or certification
19 purposes, the authorized agency, organization, or individual shall
20 expeditiously furnish a copy of the information to the person to
21 whom the information relates if the information is a basis for an
22 adverse employment, licensing, or certification decision. When
23 furnished other than in person, the copy shall be delivered to the
24 last contact information provided by the applicant.

25 (u) State summary criminal history information compiled by
26 the Attorney General and disseminated pursuant to this section
27 shall exclude any charge or conviction for which relief has been
28 granted pursuant to Section 236.23.